

Atty. Dkt. No. SEDN/168CIP1
Serial No. 09/359,561

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Application of: Ludvig et al.

Serial No.: 09/359,561

Examiner: Huynh, Son P.

Filed: July 22, 1999

For: APPARATUS AND METHOD FOR
ENCODING A USER INTERFACEOffice of Petitions
Mail Stop Petition
Commissioner for Patents
Alexandria, VA 22313-1450

Group Art Unit: 2611

JAN 03 2006

CERTIFICATE OF MAILING OR TRANSMISSION	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, or being facsimile transmitted to the USPTO, on the date indicated below.	
Date	<u>1/3/2006</u> <i>LAURA R. CRATER</i>

Dear Sir:

PETITION TO REVIVE AN APPLICATION FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a) OR ALTERNATIVELY TO REVIVE AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)

The above-identified application (this "application") became abandoned for "Applicants' failure to timely file a proper reply to the Office letter mailed on 17 October 2003. A reply was received on 04 October 2004 (with a Certificate of Mailing or Transmission dated 04 October 2004), which is after the expiration of the period for reply which expired on 17 November 2003." The Notice of Abandonment was mailed by the Office on December 21, 2005 and was received by Applicants' attorneys on December 23, 2005.

Unavoidable Delay:

Applicants hereby petition for revival of this application by reason of unavoidable delay. The above-identified application became abandoned for failure to file a timely and proper reply to the Notice of Non-Compliant Amendment mailed on October 17, 2003. The period for reply expired on November 17, 2003. The requirements for a grantable petition to revive for unavoidable delay are set forth in 37 C.F.R. 1.137(a). They are (1) Petition fee; (2) Reply and/or issue fee; (3) Terminal disclaimer with disclaimer fee-required for all utility and plant applications filed before June 8, 1995, and for all design applications; and (4) Adequate

In satisfaction of these requirements Applicants submit that:

(1) The Commissioner is hereby authorized to charge counsel's Deposit Account 20-0782/SEDN/168CIP1 for the Petition fee in the amount of \$250. The Commissioner is further authorized to charge counsel's Deposit Account 20-0782/SEDN/168CIP1 for any other fees due to make this Petition timely and complete.

(2) A reply to the Notice of Non-Compliant Amendment was filed on October 4, 2004 and is of record. In the event this application was deemed by the Office to be abandoned, in the reply to the Notice of Non-Compliant Amendment filed on October 4, 2004, Applicants petitioned the Office to withdraw any holding of abandonment because the October 17, 2003 Notice of Non-Compliant Amendment had not been received.

(3) This application was filed after June 8, 1995, and therefore a Terminal disclaimer is not required.

(4) An adequate showing of the cause of unavoidable delay is set forth below:

A response to the Office Action mailed on June 3, 2005 was filed on September 3, 2003.

On May 24, 2004, Applicants filed a Status Inquiry requesting the anticipated date of the next Office Action. Applicants did not receive a response to the Status Inquiry.

On October 4, 2004, Examiner Son P. Huynh called Applicants' counsel and asked if Applicants had deliberately not responded to the Notice of Non-Compliant Amendment mailed on October 17, 2003. The Examiner was advised that the Notice of Non-Compliant Amendment had not been received, and the Examiner faxed a copy of the October 17, 2003 Notice of Non-Compliant Amendment to Eamon J. Wall and Laura Crater on October 4, 2004. On October 4, 2004, Applicants filed a Response to the Notice of Non-Compliant Amendment mailed on October 17, 2003 but not received by Applicants until October 4, 2004. In the response, Applicants submitted that "[S]hould the Office deem this application to have been abandoned, Applicants' respectfully petition the Office to withdraw the holding of abandonment because the October 17, 2003 Notice of Non-Compliant Amendment was not received." Pursuant to 37 C.F.R. 1.181(a), the showing required to establish nonreceipt of an Office communication must include a statement from

the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and the docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received must be attached to and referenced in practitioner's statement. The requisite showing was made in Applicants' October 4, 2004 filing.

A Status Inquiry was filed on February 10, 2005. A further Status Inquiry was filed on April 7, 2005.

On July 27, 2005, Ms. Crater spoke with the Examiner who referred her to Christopher Grant, Supervisory Patent Examiner of Technology Center 2600. She left a message for Mr. Grant on July 27, 2005 and spoke with him on July 28, 2005. She advised that no action had been taken by the Office in response to Applicants' October 4, 2004 Response to Notice of Non-Compliant Amendment/Petition to Withdraw Holding of Abandonment. She again spoke with Mr. Grant on August 16, 2005. On December 13, 2005, Ms. Crater left a message for Mr. Grant. On December 15, 2005, Mr. Grant returned Ms. Crater's call and advised that the application was abandoned and a Notice of Abandonment would be sent. As mentioned above, the Notice of Abandonment was mailed by the Office on December 21, 2005 and received by Applicants' attorneys on December 23, 2005.

Unintentional Delay: Alternatively, if the Commissioner denies the Petition for Revival by reason of unavoidable delay, Applicants petition for revival of this application by reason of unintentional delay. The entire delay from the due date of the reply until the filing of this grantable petition under 37 CFR 1.137(b) was unintentional. The response to the Notice of Non-Compliant Amendment mailed on October 17, 2003 was filed on October 4, 2004 and is of record. The Commissioner is authorized to charge counsel's Deposit Account No. 20-0782/SEDN/168CIP1 for the Petition fee in the amount of \$750. The Commissioner is further authorized to charge counsel's Deposit Account 20-0782/SEDN/168CIP1 for any other fees due to make this Petition timely and complete.

Accordingly, Applicants respectfully request revival of the above-identified application.

Respectfully submitted,



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